



Signed and Filed: December 29, 2017

A handwritten signature in black ink, appearing to read "Hannah L. Blumenstiel".

HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge
UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:) Case No. 16-50543 HLB
)
ROBERT W. PAYNE and EILEEN P.) Chapter 13
TREMAIN,)
)
)
Debtors.)

MEMORANDUM DECISION

This case came before the court on August 1, 2017 for trial on an objection to confirmation filed by creditors LaRiviere Grubman & Payne LLP ("LGP") and Mr. F. David LaRiviere (Dkt. 12, the "Objection"). Prior to trial, the court limited the issues to be tried to those grounded in sections 1325(a)(3) and (a)(7)¹ namely, whether the joint debtors: (1) proposed their plan in good faith and not by any means forbidden by law; and (2) filed their petition in good faith.

For the reasons that follow, the court finds that joint debtors Eileen P. Tremain and Robert W. Payne did not file their petition in good faith because they failed to engage in reasonable efforts to ensure the accuracy of their schedules

¹ Unless otherwise indicated, all statutory citations shall refer to Title 11 of the United States Code, aka the Bankruptcy Code, and all citations to rules shall refer to the Federal Rules of Bankruptcy Procedure.

1 and either deliberately omitted debts owed to LGP, LG, and/or
2 Mr. LaRiviere, or remained willfully ignorant as to the
3 existence and/or the amounts of such debts. The court declines
4 to find that Mr. Payne and Ms. Tremain proposed their plan in
5 bad faith, principally because they have amended the plan to
6 cure the deficiencies to which LGP and Mr. LaRiviere point as
7 evidence that they did not propose it in good faith.
8 Accordingly, the court **SUSTAINS IN PART AND OVERRULES IN PART**
9 Mr. LaRiviere's and LGP's Objection.

10 **A. Jurisdiction**

11 This contested matter constitutes a core proceeding in
12 which the court may enter a final order. 28 U.S.C.
13 §157(b)(2)(L); Northern District of California General Order
14 No. 24. This memorandum decision constitutes the findings of
15 fact and conclusions of law required by Rules 7052 and 9014(c).

16 **B. Findings of Fact.**

17 For more than 20 years, Mr. Payne and Mr. LaRiviere
18 practiced law as partners in LGP. They do not dispute that Mr.
19 Payne held a 45% interest in that partnership, while Mr.
20 LaRiviere held a 55% interest. In September 2014, Mr. Payne
21 withdrew from the partnership. Pursuant to section 5.3 of
22 LGP's articles of incorporation (as amended), Mr. Payne's
23 withdrawal resulted in LGP's dissolution or termination, and
24 required that the partnership be "wound down in accordance with
25 the general law regarding partnerships in California."

26 [Debtors' Ex. A, § 5.3.1.]

27 Mr. Payne's departure left Mr. LaRiviere responsible for
28 LGP's wind-down, which involved, among other things, collecting

1 LGP's accounts receivable and administering LGP's 40% interest
2 in Justin Court LP ("JCLP"), an entity in which LGP also served
3 as general partner. In addition to managing LGP's wind-down,
4 Mr. LaRiviere had to earn a living, so he quickly formed a new
5 firm: LaRiviere & Grubman, P.C. ("LG").

6 JCLP owned commercial real property located at 19 Upper
7 Ragsdale Drive, Suite 200, Monterey, California (the
8 "Property"). JCLP acquired the Property with two loans, each
9 of which were secured by the Property and guaranteed by Mr.
10 Payne and Mr. LaRiviere. [Creditors' Exs. 28-30.]

11 LGP was JCLP's tenant pursuant to a lease originally dated
12 August 28, 2003.² After Mr. Payne withdrew from LGP, he and Mr.
13 LaRiviere agreed that LGP would remain liable for any unpaid
14 rent through September 15, 2014 and that thereafter, LG would
15 become liable for rent on 40% of the space previously occupied
16 by LGP. [Debtors' Ex. C.] They also agreed that LG would take
17 over for LGP as JCLP's general partner. [Id.] The court
18 received no evidence as to whether the parties reduced any of
19 these details to formal, written agreements.

20 After Mr. Payne withdrew from LGP, it fell entirely to Mr.
21 LaRiviere³ to make sure JCLP remained current on payments to its
22 secured lenders. According to Mr. LaRiviere, this became
23 increasingly difficult because the rent paid by LG was

25 ² The lease's original term ended December 31, 2009. It provided, however,
26 for two, five-year renewal options, one of which appears to have been
27 exercised, given that LGP continued to occupy the Property until it dissolved
due to Mr. Payne's departure.

28 ³ As the one left in charge of LGP, JCLP's original general partner, and as
the apparent manager of LG, JCLP's successor general partner

1 insufficient to cover the monthly payments owed to the lenders
2 whose claims were secured by the Property and guaranteed by
3 Messrs. Payne and LaRiviere.

4 In December 2014, Mr. LaRiviere sent Mr. Payne a letter
5 advising that "a substantial shortfall has developed between
6 the monthly amount due on the loans on the building and the
7 amount payable as monthly rent." [Creditors' Ex. 18.] Mr.
8 LaRiviere further advised that, in order to preserve LG's and
9 LGP's "reputation and credit worthiness," to preserve the value
10 of the Property, and to avoid triggering liability on the
11 guarantees, he had personally covered the shortfall from the
12 time of Mr. Payne's departure through December 31, 2014, to the
13 tune of nearly \$22,000. [Id.] Mr. LaRiviere asked Mr. Payne
14 to reimburse him for half that amount, plus half of the amount
15 necessary to cover the shortfall that would accrue in January
16 2015, stating: "I cannot continue to sustain these expenses
17 alone." [Id.]

18 Among LGP's other obligations was a \$400,000 line of
19 credit with Rabobank N.A., which was secured by LGP's
20 inventory, accounts, equipment, and general intangibles (the
21 "Rabobank LOC"). [Creditors' Exs. 14 and 15.] Messrs. Payne
22 and LaRiviere jointly and severally guaranteed repayment of the
23 Rabobank LOC.⁴ [Creditors' Ex. 14, as to Mr. Payne's
24 guaranty.] As of November 19, 2013, the outstanding principal
25 balance on the Rabobank LOC totaled \$40,000. [Creditors' Ex.
26 14.] By the time Mr. Payne withdrew from LGP, the amount due

27
28 ⁴ Mr. Payne's and Mr. LaRiviere's guarantees were unsecured. [Creditors' Exs.
14 and 15.]

1 on the Rabobank LOC totaled \$312,934. [Creditors' Ex. 31.] On
2 February 26, 2016, when Mr. Payne and Ms. Tremain filed their
3 petition for relief under Chapter 13, the total amount due on
4 the Rabobank LOC was \$288,366.01. [Creditors' Ex. 15.]

5 By the time Mr. Payne withdrew from LGP, the firm was not
6 profitable and was "in a bunch of trouble," unable even to
7 generate revenue sufficient to make payroll, which Mr.
8 LaRiviere was covering out of his own pocket. LGP also had
9 stopped paying the full amount of its rent to JCLP, and here
10 again, Mr. LaRiviere stepped in to cover any shortfall to the
11 extent he was able.

12 Collection of LGP's accounts receivable proved difficult,
13 particularly given that sole responsibility for that task fell
14 to Mr. LaRiviere. Any collections went to pay LGP's debts, but
15 these were insufficient to fully satisfy LGP's obligations, not
16 the least of which was the Rabobank LOC, on which LGP
17 defaulted. This led Rabobank to pursue Messrs. Payne and
18 LaRiviere on account of their guarantees.

19 In January 2016, however, JCLP sold the Property.
20 According to the Seller's Settlement Statement [Debtors' Ex.
21 D], JCLP received \$435,680.35 in net proceeds. Of this, LGP
22 was entitled to receive \$201,074.⁵ [Creditors' Ex. 31.]
23 \$100,000 of LGP's net sale proceeds, however, was paid to
24 Rabobank out of escrow, which reduced the balance due on the
25

26 ⁵ Without explanation, Mr. LaRiviere testified that LGP received net sale
27 proceeds of approximately \$175,000. This is refuted by a memorandum prepared
28 by LGP's accountant, which confirms the rough accounting set forth above.
[Creditors' Ex. 31.] The court finds the accountant's memorandum more
credible than Mr. LaRiviere's testimony on this point.

1 Rabobank LOC to approximately \$212,934. [Id.] The remaining
2 \$101,074 was paid to Mr. LaRiviere. [Id.] The rationale for
3 this is explained in Creditors' Exhibit 31 (a January 13, 2017
4 memorandum from LGP's accountant).

5 Exhibit 31 for the most part confirms Mr. LaRiviere's
6 testimony that, from the time of Mr. Payne's departure through
7 the sale of the Property, he made sure that JCLP remained
8 current on the debts secured by the Property, as well as on
9 taxes and utility payments. His efforts preserved the value of
10 the Property and avoided triggering his and Mr. Payne's
11 liability under their guarantees of the debts secured by the
12 Property. Exhibit 31 also confirms that collection of LGP's
13 accounts receivable proved inadequate to satisfy its
14 outstanding obligations and that Mr. LaRiviere stepped in and
15 covered those obligations himself. According to LGP's
16 accountant, this justified the transfer to Mr. LaRiviere of all
17 remaining net proceeds due to LGP from the sale of the
18 Property. Exhibit 31 also confirms that, once he withdrew from
19 LGP, Mr. Payne contributed next to nothing toward LGP's
20 expenses.

21 Out of what he received from LGP's share of the net
22 proceeds from the sale of the Property, Mr. LaRiviere held back
23 approximately \$5,000 in anticipation of unspecified taxes and
24 expenses associated with LGP's wind-down. He also reimbursed
25
26
27
28

1 himself for "loans"⁶ he had made to cover LGP's expenses and
2 paid certain other of LGP's debts.

3 While some of LGP's proceeds from the sale of the Property
4 were used to reduce the amount owed on the Rabobank LOC, they
5 did not completely satisfy that obligation. In January 2016,
6 Rabobank's attorney sent an email to Messrs. Payne and
7 LaRiviere in which he stated that he intended to commence
8 litigation against them on January 28, 2016 and to pursue pre-
9 judgment efforts to attach assets that could be used to satisfy
10 their obligations under their respective guarantees.

11 [Creditors' Ex. 20.]

12 In response to this threat, Mr. Payne and Ms. Tremain
13 filed a petition for relief under Chapter 13 on February 26,
14 2016. Mr. LaRiviere, however, entered into a settlement
15 agreement with Rabobank, pursuant to which he assumed
16 responsibility for repaying the entire guaranteed amount - more
17 than \$300,000. [Creditors' Exs. 22 and 23.] Rabobank's
18 amended proof of claim reflects that Mr. LaRiviere has been
19 making payments pursuant to his settlement, and that Mr.
20 Payne's liability to Rabobank is being reduced accordingly.

21 [Creditors' Ex. 15.]

22 As required by section 521, Mr. Payne and Ms. Tremain
23 filed along with their petition schedules of their assets and
24 liabilities, as well as a Statement of Financial Affairs and
25 other documents. They did not, however, disclose in their
26

27 ⁶ According to Exhibit 31, these "loans" never existed in the formal sense.
28 Rather, this appears to have been Mr. LaRiviere's way of referring to the
significant expenses he paid on LGP's behalf.

1 schedules any debts to Mr. LaRiviere, to LGP, or to LG.
2 Indeed, Mr. Payne admitted that he did not even notify Mr.
3 LaRiviere that he had filed a bankruptcy case. Mr. LaRiviere
4 claims to have learned of it only through Rabobank's counsel.
5 [Creditors' Ex. 21.]

6 **C. Summary of Arguments**

7 According to LGP and Mr. LaRiviere, the joint debtors'
8 failure to schedule debts to LGP, LG, and Mr. LaRiviere
9 constituted a deliberate effort to avoid the debt limits of
10 section 109(e), which limits eligibility for relief under
11 Chapter 13 to joint debtors with less than \$383,175 of
12 noncontingent, liquidated, unsecured debts. LGP, LG, and Mr.
13 LaRiviere also contend that Mr. Payne and Ms. Tremain
14 misrepresented their past and present tax liability and their
15 income. LGP, LG, and Mr. LaRiviere argue that, taken together,
16 these deliberate omissions or misrepresentations prove that Mr.
17 Payne and Ms. Tremain did not file their petition in good faith
18 and justify entry of an order sustaining their Objection to
19 confirmation of the proposed plan. .

20 LGP, LG, and Mr. LaRiviere also contend that confirmation
21 should be denied because Mr. Payne and Ms. Tremain have not
22 proposed their plan in good faith. Here, LGP, LG, and Mr.
23 LaRiviere claim that Mr. Payne and Ms. Tremain fail to
24 contribute all of their disposable income to their proposed
25 plan payments, apparently because certain secured debts will be
26 paid off during the course of the plan and the joint debtors
27 fail to reallocate the money used for those payments toward
28 what they propose to pay to unsecured creditors. They also

1 argue that Mr. Payne and Ms. Tremain have overstated their
2 business expenses and overstated their monthly income tax
3 expenses, which artificially reduced the amount of disposable
4 income devoted to paying unsecured creditors.

5 Mr. Payne and Ms. Tremain, of course, deny all of this.
6 According to them, LGP had accumulated profits with which Mr.
7 LaRiviere absconded, leaving LGP unable to pay its debts as
8 they became due. Mr. Payne and Ms. Tremain also argue that
9 they reasonably believed that LGP's share of the net proceeds
10 from the sale of the Property should have been sufficient to
11 pay all of LGP's debts; therefore, they contend that they also
12 reasonably believed they did not owe anything to LGP, LG, and
13 Mr. LaRiviere and did not include any debts to them in their
14 schedules.

15 They further contend that Mr. LaRiviere kept them, and
16 particularly Mr. Payne, "in the dark" about LGP's financial
17 affairs, failing to tell them, for example, that Mr. Payne had
18 drawn approximately \$80,000 on the Rabobank LOC and used those
19 funds to start LG, his new firm, or that LGP had unpaid credit
20 card debt. And, even if they had liability to LGP, LG, or Mr.
21 LaRiviere, Mr. Payne and Ms. Tremain assert that their
22 liability is limited to the extent of Mr. Payne's interest in
23 LGP, or 45%. The joint debtors' trial brief does not respond
24 to LGP's and Mr. LaRiviere's arguments concerning their alleged
25 misrepresentations of their income and expenses.

26 **D. Conclusions of Law**

27 Section 1325 governs confirmation of plans in cases
28 pending under Chapter 13 of the Bankruptcy Code and requires

1 the court to confirm a plan if, among other things, "[it] has
2 been proposed in good faith and not by any means forbidden by
3 law" (11 U.S.C. § 1325(a)(3)) and if "the action of the debtor
4 in filing the petition was in good faith" (11 U.S.C. §
5 1325(a)(7)). The good faith requirements of sections
6 1325(a)(3) and (a)(7) are closely related and are frequently
7 based on the same factors. In re Lavilla, 425 B.R. 572, 577
8 (Bankr. E.D. Cal. 2010).

9 When seeking confirmation of a plan, the debtor, as plan
10 proponent, has the burden of proving that the case and the plan
11 were filed in good faith. Ellsworth v. Lifescape Med. Assoc.
12 P.C. (In re Ellsworth), 455 B.R. 904, 918 (B.A.P. 9th Cir.
13 2011). A debtor satisfies this burden with a preponderance of
14 the evidence. U.S. ex rel Farmers Home Admin. V. Arnold &
15 Baker Farms (In re Arnold & Baker Farms), 177 B.R. 648, 655
16 (B.A.P. 9th Cir. 1994).

17 The Bankruptcy Code does not define "good faith." The
18 Ninth Circuit has held that "the proper inquiry is whether the
19 [debtors] acted equitably." Goeb v. Heid (In re Goeb), 675
20 F.2d 1386, 1390 (9th Cir. 1982) (analyzing good faith under
21 section 1325(a)(3)). In making that inquiry, the court applies
22 a "totality of the circumstances" test, taking into account (1)
23 whether the debtor misrepresented facts, unfairly manipulated
24 the Bankruptcy Code or otherwise proposed the plan in an
25 inequitable manner; (2) the history of the debtor's filings and
26 dismissals; (3) whether the debtor intended only to defeat
27 state court litigation; and (4) whether the debtor's behavior
28 was egregious. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219,

1 1224 (9th Cir. 1999). The court can determine that a plan or
2 petition were not filed in good faith without having to find
3 that the debtor acted in bad faith, i.e., acted with dishonesty
4 of belief or purpose. Guastella v. Hampton (In re Guastella),
5 341 B.R. 908, 920 (B.A.P. 9th Cir. 2006) (bankruptcy schedules
6 that bore no relationship to reality in the estimation of a
7 judgment creditor's claim supported a finding that the petition
8 was not filed in good faith).

9 **a. Good Faith in Filing the Petition**

10 Mr. LaRiviere and Mr. Payne launched LGP on August 1,
11 1994; they were partners in the practice of law for more than
12 twenty years. [Debtors' Ex. A.] Despite this long business
13 relationship, Mr. Payne would have the court believe that he
14 knew next to nothing about LGP's profits and losses, what it
15 would take to wind down a law firm in which he had been a
16 partner for more than two decades, and that he had no idea that
17 Mr. LaRiviere was incurring extraordinary personal expenses to
18 avoid disastrous financial consequences for himself and Mr.
19 Payne. The court cannot accept Mr. Payne's version of the
20 story, for several reasons.

21 First, the court does not believe that Mr. Payne could
22 have been a partner in what was essentially a two-person
23 partnership for more than twenty years without absorbing some
24 knowledge of the firm's financial picture, including what its
25 ordinary course income and expenses were, what its revenues
26 were, etc. In order for the court to accept Mr. Payne's claim
27 that he reasonably believed he owed nothing to LGP, LG, and/or
28 Mr. LaRiviere, the court also would be required to accept that

1 Mr. Payne learned nothing in 20 years about the business in
2 which he was a partner. The court cannot accept either
3 premise, because they make no sense and because Mr. LaRiviere's
4 testimony proves them untrue.

5 Mr. LaRiviere testified that, periodically throughout
6 LGP's existence, he, Mr. Payne, their office manager, and their
7 accounting manager would meet to discuss attorney workload,
8 payables, receivables, etc. Mr. LaRiviere testified
9 specifically about one such meeting that took place just prior
10 to Mr. Payne's departure. At that point, LGP was in a "bunch
11 of trouble." "We were not collecting enough to cover our
12 payables, and I was contributing enough money at that point in
13 time to make payroll." Mr. LaRiviere also testified that, at
14 the same time, he was not taking a salary because LGP could not
15 afford to pay him.

16 Mr. Payne did not dispute Mr. LaRiviere's testimony about
17 these meetings generally, or that one such meeting took place
18 just prior to his departure. This unrefuted evidence renders
19 false Mr. Payne's claim to have been ignorant of LGP's
20 financial picture.

21 In addition, the written agreements governing the
22 partnership rendered each partner personally liable for the
23 firm's debts to the extent those obligations exceeded the
24 firm's assets. Given that he knew of LGP's precarious
25 financial condition, these provisions should have prompted Mr.
26 Payne to at least investigate the extent of LGP's assets for
27 the purpose of determining whether he might have liability for
28 the firm's debts, whether to third party creditors or to Mr.

1 LaRiviere, whom Mr. Payne knew was paying LGP's wind-down
2 expenses.

3 LGP's Articles of Incorporation required the firm to
4 indemnify a partner for "payments made and liabilities
5 reasonably incurred in the ordinary and proper conduct of
6 [LGP's] business or property" or for "payments made or
7 liabilities incurred for the preservation of the Firm's
8 business or property." [Debtors' Ex. A, § 6.4 (as amended June
9 12, 2006).] Where any such payment or liability exceeded
10 \$1,000, however, the partner making the payment or incurring
11 the liability on the firm's behalf was required to obtain the
12 prior consent of the other partners, except to the "extent such
13 expenditures have been borne by the firm in the ordinary course
14 of business." [Id.] This provision is significant because it
15 expresses Mr. Payne's agreement that, to the extent Mr.
16 LaRiviere was paying LGP's expenses out of his own pocket, Mr.
17 LaRiviere might have been entitled to look to LGP for
18 indemnification.

19 LGP's Articles of Incorporation also stated:

20 No withdrawing partner shall be relieved of his or
21 her liability to third parties by reason of
22 withdrawal from the Firm except to the extent of Firm
23 assets. In the event of a dissolution of the Firm,
24 each then partner or former partner shall remain
25 liable for obligations of the Firm incurred while
26 such person was a partner in the Firm to the extent
27 that the assets of the Firm are insufficient to
28 satisfy such obligation. All partners, whether
general or restricted, shall be individually liable
in proportion to the balance in their capital
accounts."

27 [Id., § 7.2.] This provision makes clear that, even after his
28 withdrawal from LGP, Mr. Payne remained on the hook for the

1 firm's liabilities to the extent its assets were insufficient
2 to cover them.

3 As to the extent of LGP's assets, Mr. Payne makes two
4 arguments. First, he claims that LGP's revenues should have
5 been sufficient to cover its expenses (other than the Rabobank
6 LOC), even going so far as to claim in Debtors' Trial Brief
7 that LGP had accrued profits with which Mr. LaRiviere
8 wrongfully absconded. Second, he claims that, even if his
9 first argument is incorrect, LGP's share of the net proceeds
10 from the sale of the Property should have been sufficient to
11 cover all of LGP's debts, except for the Rabobank LOC. The
12 first of Mr. Payne's arguments lacks credibility and frankly,
13 any basis in reality. The second constitutes an admission
14 that, at the time he and Ms. Tremain sought relief in this
15 court, Mr. Payne knew or had reason to know that he might owe
16 money to Mr. LaRiviere, given that Mr. LaRiviere was making
17 payments on the guaranteed obligation to Rabobank and reducing
18 Mr. Payne's liability thereon.

19 Mr. LaRiviere consistently and credibly testified that LGP
20 was in terrible financial condition at the time Mr. Payne left
21 the firm. It did not generate revenue sufficient to make
22 payroll, which Mr. LaRiviere paid from his own pocket. It
23 could not afford to pay salaries to its partners. And while
24 LGP certainly had receivables to collect, the only evidence the
25 court received led to the unequivocal conclusion that, even if
26 LGP succeeded in collecting every cent owed, they would not
27 suffice to pay all of LGP's outstanding debts. Given Mr.
28

1 Payne's proven knowledge of LGP's financial condition, he
2 cannot credibly claim that LGP was profitable.

3 Nevertheless, that is exactly the story Debtors' Trial
4 Brief attempts to tell. It argues in at least two places that
5 LGP had "accrued profits" of more than \$65,000, with which Mr.
6 LaRiviere allegedly absconded. [Debtors' Trial Brief, 3:16-17;
7 4:6-7.] As proof, Mr. Payne points to Exhibit 31 and its
8 reference to a "distribution" to Mr. LaRiviere in the amount of
9 \$65,102. Exhibit 31 does indicate that Mr. LaRiviere received
10 \$65,102, but it goes on to state that all cash was accounted
11 for on Mr. LaRiviere's "side of the ledger" because he was
12 contributing funds out of pocket to manage LGP's affairs, while
13 Mr. Payne contributed nothing. Exhibit 31 does not prove LGP
14 had any profits at any time.

15 Moreover, Mr. Payne's testimony contradicted the arguments
16 in Debtors' Trial Brief. He testified that LGP was "suffering
17 massive losses," which completely undermines any allegation
18 that LGP had accrued profits.

19 Next, Mr. Payne and Ms. Tremain contend that LGP's share
20 of the net proceeds from the sale of the Property should have
21 been enough to pay all of its debts, other than the Rabobank
22 LOC. This is a startling admission. Clearly, Mr. Payne knew
23 that he remained obligated to Rabobank on account of his
24 guaranty - he and Ms. Tremain included a debt to Rabobank in
25 their Schedule F.

26 Mr. Payne cannot credibly claim not to have known that Mr.
27 LaRiviere was making payments to Rabobank on account of his own
28 guaranty. And indeed, Mr. Payne does not specifically make

1 such a claim. All he suggests is that Mr. LaRiviere kept him
2 "in the dark" about financial issues. This is flatly untrue,
3 as proven by the uncontroverted testimony detailing meetings
4 concerning LGP's financial affairs, the correspondence from Mr.
5 LaRiviere to Mr. Payne requesting assistance in covering
6 expenses, etc. But the one thing Mr. Payne never claimed to
7 have done was ask Mr. LaRiviere whether he thought Mr. Payne
8 owed him money prior to filing bankruptcy. Such a simple
9 question, but one that neither Mr. Payne nor Ms. Tremain
10 appears to have asked.

11 And even if it is true that Mr. LaRiviere did not reach
12 out to Mr. Payne to keep him fully advised as to who owed what
13 to whom, once Mr. Payne and Ms. Tremain decided to seek relief
14 in this court, they had an obligation to conduct a reasonable
15 investigation into their assets and liabilities and to be as
16 accurate and as truthful as possible in disclosing that
17 information to the court, to their creditors, and to other
18 parties in interest before attesting to the accuracy of that
19 information *under penalty of perjury*. Cusano v. Klein, 264
20 F.3d 936, 946 (9th Cir. 2001). As the preeminent bankruptcy
21 treatise points out: "The fact that the debtor does not have
22 complete knowledge of his or her own affairs will not excuse
23 the omission of creditors from the schedules." 4 Collier on
24 Bankruptcy, ¶ 521.06[2][b] (Alan N. Resnick & Henry J. Sommer
25 eds., 16th ed.).

26 Mr. Payne and Ms. Tremain went to great lengths during
27 trial to attack each component of the claims filed by LGP, LG,
28 and Mr. LaRiviere, in an apparent attempt to prove that they

1 owed them nothing and that their schedules were filed in good
2 faith. What they unfailingly admit, however, is continued
3 liability on account of the Rabobank guaranty. Even if all
4 other components of LGP's, LG's, and Mr. LaRiviere's claims
5 fall away, the liability on the Rabobank guaranty exists. And
6 with that liability comes Mr. LaRiviere's right to seek
7 contribution from Mr. Payne for payments Mr. LaRiviere made on
8 account of that guaranteed obligation.

9 Long-settled California law gives a co-guarantor who pays
10 a guaranteed obligation a right to seek contribution from other
11 co-guarantors. Cal. Civ. Code § 2848; Overholser v. Glynn, 267
12 Cal. App. 2d 800, 807 (1968) (a guarantor that paid more than
13 its fair share may sue co-guarantors to obtain contribution);
14 Am. Int'l Specialty Lines Ins. Co. v. Cont'l Cas. Ins. Co., 142
15 Cal. App. 4th 1342, 1364 (2006) (same). Given the joint
16 debtors' admission that Mr. Payne's liability as a guarantor of
17 the Rabobank LOC persisted, given the lack of any credible
18 claim not to have known that Mr. LaRiviere was making payments
19 on his own guaranty of that obligation, Mr. Payne knew or
20 should have known he might owe something to Mr. LaRiviere, and
21 he and Ms. Tremain should have disclosed such a debt in their
22 schedules. At the very least, they should have asked the
23 question.

24 Mr. Payne and Ms. Tremain failed to engage in reasonable
25 efforts to determine the nature and extent of any liability one
26 or both of them might have had on account of obligations
27 arising from Mr. Payne's interest in LGP. This constitutes the
28 kind of inequitable and egregious conduct that justifies the

1 conclusion that they did not file their petition in good faith
2 as required by section 1325(a)(7).⁷

3 This result might seem unfair as to Ms. Tremain, who was
4 not a partner in LGP. This was, however, a joint petition and
5 in filing it, Ms. Tremain assumed the same obligation as Mr.
6 Payne to do her level best to ensure the completeness and
7 accuracy of their schedules. Beyond her signature, which
8 verified the joint petition, schedules, and other required
9 documents under penalty of perjury, the court received no
10 evidence whatsoever relevant to the issue of Ms. Tremain's good
11 faith, which was clearly implicated by LGP's and Mr.
12 LaRiviere's Objection. Ms. Tremain never even took the stand.
13 The Debtors bore the burden of proof on the issue of good
14 faith, and they failed to sustain it.

15 The court declines to find, however, that Mr. Payne and
16 Ms. Tremain omitted obligations to LGP, LG, and/or Mr.
17 LaRiviere for the purpose of ensuring their eligibility for
18 relief under Chapter 13. Ms. Tremain and Mr. Payne dispute
19 most of the components of LGP's, LG's, and Mr. LaRiviere's
20 claims and have raised these disputes by objecting to those
21 claims. Without addressing those objections (which were not
22 the subject of the trial), the court is unable to reach a
23 conclusion as to the joint debtors' eligibility for relief
24 under Chapter 13. And the court certainly did not receive
25 evidence sufficient to prove that a desire to stay within
26

27 ⁷ Neither Mr. Payne nor Ms. Tremain have any prior bankruptcy cases, so this
28 factor does not support a finding that they acted in bad faith in filing this
case or in filing their plan.

1 section 109(e)'s debt limits caused the joint debtors to omit
2 LG, LGP, and/or Mr. LaRiviere from their schedules.

3 LGP and Mr. LaRiviere next argue that Ms. Tremain and Mr.
4 Payne filed this case for the sole purpose of defeating state
5 court litigation commenced by Rabobank. The court received no
6 evidence whatsoever as to whether this motivated Ms. Tremain to
7 file for bankruptcy. As previously mentioned, she did not take
8 the stand to explain, let alone prove, her good faith. That
9 said, she appears to have had no personal liability on account
10 of the Rabobank guaranty beyond that creditor's ability, if
11 any, to pursue community property for repayment. Mr. Payne,
12 however, testified candidly and credibly that, while Rabobank's
13 collection efforts pushed him and Ms. Tremain over the brink,
14 they had other debt to reorganize. For this reason, the court
15 declines to find that the joint debtors were motivated solely
16 by an effort to defeat Rabobank's state court litigation such
17 that they filed their bankruptcy petition in bad faith.

18 Finally, LGP and Mr. LaRiviere assert that Ms. Tremain and
19 Mr. Payne misrepresented their past and present tax liability
20 and income and that this further justifies a finding that they
21 did not file their petition in good faith. The court does not
22 agree.

23 As to his tax liability, Mr. Payne credibly testified that
24 he consulted with his accountant and counsel in calculating his
25 monthly expenses for estimated tax payments. While his
26 calculation might have been high for 2015, that did not result
27 from any effort to affirmatively misrepresent that expense in
28 order to keep money away from creditors or from (as with

1 obligations to LGP, LG, and/or Mr. LaRiviere) an utter failure
2 to attempt to ascertain what that liability might be. And as
3 for 2016, Mr. Payne credibly testified that the monthly expense
4 might be too low.

5 As for his business expenses, Mr. Payne explained that
6 originally his and Ms. Tremain's schedules claimed income and
7 expenses from LGP - an obvious error, given that Mr. Payne left
8 LGP in 2014, approximately a year-and-a-half prior to the
9 commencement of their bankruptcy case. Mr. Payne attributes
10 that error to his bankruptcy counsel, who readily admitted his
11 mistake during trial. Mr. Payne and Ms. Tremain amended their
12 schedules to correct that error in November 2016. While
13 sloppy, this error does not prove that the joint debtors did
14 not file their petition in good faith.

15 **b. Good Faith in Filing the Plan**

16 Mr. LaRiviere and LGP argue that Ms. Tremain's and Mr.
17 Payne's alleged misrepresentations in their schedules
18 concerning their past and present tax liability and business
19 income and expenses also justify denial of confirmation under
20 section 1325(a)(3). The court rejects that argument here, just
21 as firmly as it did when advanced in support of denial of
22 confirmation under section 1325(a)(7).

23 The court also overrules LGP's and Mr. LaRiviere's
24 argument that a lack of good faith is proven by the joint
25 debtors' failure to reallocate to unsecured creditors money
26 devoted in the first several months of the plan to payments on
27 secured claims, where those claims will be paid in full during
28 the plan's term. While this argument might have been well-

1 taken when initially raised, it now appears moot. On December
2 15, 2016, Mr. Payne and Ms. Tremain filed a second amended plan
3 {Dkt. 56} that reallocates to unsecured creditors most of the
4 money devoted to secured claims that will be paid in full
5 during the term of their plan. [See also Dkt. 47.]
6 Accordingly, the court overrules the Objection as moot on this
7 issue.

8 **E. Conclusion**

9 The court sustains the Objection under section 1325(a)(7)
10 for the reasons stated herein. The court overrules the
11 Objection under section 1325(a)(3).

12
13 ****END OF ORDER****
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Court Service List

[None]